

REMARKS

The Office Action mailed February 21, 2008, has been received and reviewed. Claims 33 through 39 are currently pending in the application. Claims 33 through 39 stand rejected.

Applicants respectfully request reconsideration of the application as amended herein.

Information Disclosure Statement

Please note that the Information Disclosure Statement filed on October 29, 2007, contains a typographical error. The page number for Branston et al. Oct. 1991 "Field Emission from Metal-Coated Silicon Tips," IEEE Transaction on Electron Devices, vol. 38, No. 10, pp. 72-80, should be pp. 2329-2333. Enclosed is a corrected page of the Information Disclosure Statement for Examiner's convenience. Please initial and return to the undersigned attorney.

35 U.S.C. § 102(e) Anticipation Rejections

Anticipation Rejection Based on U.S. Patent No. 6,825,596 to Cathey, or U.S. Patent No. 5,532,177 to Cathey, or U.S. patent No. 7,064,476 to Cathey

Claims 33, 37, and 39 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,825,596 to Cathey ("Cathey '596), or U.S. Patent No. 5,532,177 to Cathey ("Cathey '177), or U.S. Patent No. 7,064,476 to Cathey ("Cathey '476). Applicants respectfully traverse this rejection, as hereinafter set forth.

The 35 U.S.C. § 102(e) anticipation rejections of claims 33, 37, and 39 are improper because Cathey '596, Cathey '177, and Cathey '476 are not prior art under 35 U.S.C. § 102(e). It is noted that 35 U.S.C. § 102(e) provides that a person shall be entitled to a patent unless:

...the invention was described in - (1) an application for patent, published under section 122(b), **by another** filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent **by another** filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language..." (Emphasis added).

It is noted that “[a]nother means other than applications, in other words, a different inventive entity.” M.P.E.P. § 2136.04. However, the present application, Cathey ‘596, Cathey ‘177, and Cathey ‘476 name David A. Cathey as the sole inventor. Accordingly, none of Cathey ‘596, Cathey ‘177, and Cathey ‘476, and the present application were filed by another.

Since the present application and Cathey ‘596, Cathey ‘177, and Cathey ‘476 have the same inventive entity, Applicants respectfully submit that Cathey ‘596, Cathey ‘177, and Cathey ‘476 do not qualify as prior art under 35 U.S.C. § 102(e).

Withdrawal of the 35 U.S.C. § 102(e) rejections of claims 33, 37, and 39 is, therefore, respectfully requested, as is the allowance of each of these claims.

35 U.S.C. § 103(a) Obviousness Rejections

Obviousness Rejection Based on Cathey ‘596, Cathey ‘177, and Cathey ‘476

Claims 34 through 36, and 38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cathey ‘596, Cathey ‘177, and Cathey ‘476. Applicants respectfully traverse this rejection, as hereinafter set forth.

Since Cathey ‘596, Cathey ‘177, and Cathey ‘476 do not qualify as prior art to the present application under 35 U.S.C. § 102(e), it is respectfully requested that the rejections of claims 34 through 36, and 38 under 35 U.S.C. § 103(a) be withdrawn.

Double Patenting Rejection Based on U.S. Patent No. 6,515,414

Claims 33 through 39 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6,515,414. In order to avoid further expenses and time delay, Applicants elect to expedite the prosecution of the present application by filing a terminal disclaimer to obviate the double patenting rejections in compliance with 37 CFR §1.321 (b) and (c). Applicants’ filing of the terminal disclaimer should not be construed as acquiescence in the Examiner’s double patenting or obviousness-type double patenting rejections. Attached are the terminal disclaimer and accompanying fee.

CONCLUSION

Claims 33 through 39 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicants' undersigned attorney.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tracey Harrach', with a stylized flourish extending to the right.

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Not for submission under 37 CFR 1.99)

Application Number	09489286
Filing Date	2000-01-21
First Named Inventor	David A. Cathey
Art Unit	2879
Examiner Name	A. Patel
Attorney Docket Number	2269-7129.2US(95-0582.02/

Examiner Initial*	Cite No	Publication Number	Kind Code ¹	Publication Date	Name of Patentee or Applicant of cited Document	Pages, Columns, Lines where Relevant Passages or Relevant Figures Appear
	1					

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FOREIGN PATENT DOCUMENTS

Examiner Initial*	Cite No	Foreign Document Number ³	Country Code ² j	Kind Code ⁴	Publication Date	Name of Patentee or Applicant of cited Document	Pages, Columns, Lines where Relevant Passages or Relevant Figures Appear	T ⁵
	1	1-235124	JP		1989-09-20	Kondo		<input checked="" type="checkbox"/>

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NON-PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	T ⁵
	1	Bauch et al. Apr. 1989 "Effect of Cs Contamination on the Interface State Density of Mnos Capacitors," Applied Surface Science 39:356-363.	<input type="checkbox"/>
	2	Branston et al. Oct. 1991 "Field Emission from Metal-Coated Silicon Tips," IEEE Transaction on Electron Devices, vol. 38, No. 10, pp. 2329-2333.	<input type="checkbox"/>
	3	Ea et al. Jul. 1990 "Avalanche Electron Emission Cathode Array," Vacuum Microelectronics Conference.	<input type="checkbox"/>
	4	Evtukh et al. Jul. 30, 1995, "Parameters of the Tip Arrays Covered by Low Work Function Layers," Institute of Semiconductor Physics Academy of Sciences, Prospect Nauki 45, Kiev-252028, Ukraine (Aug. 1995).	<input type="checkbox"/>